In the High Court of Judicature at Madras

Dated : 24.10.2007

Coram

The Honourable Mr. Justice S.MANIKUMAR

Writ Petition No. 31588 of 2007
and M.P. No. 1 of 2007

M/s. Pratham Automobiles
rep.by its Managing Director
R.Vimal Kumar
No.252, 253, Annai Indira Nagar
Konerikuppam, Ponnerikarai
Kancheepuram.

.. Petitioner

v

The Deputy Commercial Tax Officer
Kancheepuram North Tax Assessment Circle
Kancheepuram.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records of the respondent pertaining to his proceedings Na.Ka.No.1045/2007/Aa2 dated 19.09.2007, cancelling the sales tax registration of the firm and quash the same and further direct that the respondent or any of the person claiming under or through him from in any way obstructing the business of the petitioner firm.

For petitioners : Mr. S.Parthaasarathy S.C.
For Mr. J. Ramakrishnan

For respondent : Mr. R.Mahadevan AGP

O R D E R

The petitioner, has challenged the order dated 19.09.2007of the respondent thereby cancelling the sales tax registration of the petitioner firm.

2. The brief facts leading to the writ petition is as follows:

The petitioner has submitted that he is a dealer to Honda Motor Cycles and Scooters etc.in the name and style of M/s. Pratham Automobiles. The firm has a show room for display of its motor bikes, scooters and othr accessories at Plot Nos.252 and 253, comprised in R.S.Nos.121/1, 138/4, 139, 140, 141/1, 142, 145/3 to 6, 72/2, in all measuring a total extent of 22.39 acres. The above said survey numbers are comprised in a lay out approved by the Town and country Planning Authority under C.S.A.R. D.T.P.No.220-87/L.P.164. The property in plot Nos. 252 and 253, totally measuring 7,800 square feet of vacant site was purchased in the name of S.G.Ashok Kumar, who is none other than the brother of Deepak Kumar, a partner in the said firm. He has revenue records and other title deeds in his name. The petitioner firm is in possession of the property under a deed of declaration date 01.12.2005 executed by S.G.Ashok Kumar in favour of the partner R.Deepak Kumar. The petitioner firm has put up a superstructure after obtaining the necessary licence and permission, in a portion of the leased site at a costs of Rs.40 lakhs and is running a show room there. After obtaining the dealership number from the Commercial Tax for the principal place of business and for the additional place of business, the petitioner had been diligently doing business in the said premises. In these circumstances, with an ulterior motive, the residents of Kancheepuram Kanaga Durgai amman Nagar and Annai Indira Nagar Residents Association at Konerikuppam, Ponnerikarai, seemed to have made representations in writing on 22.2.2007 alleging that the two dealers show room have been put up by the petitioner on the play ground owned by the Government. On the basis of the said representation, the Commissioner of Right to Information Act, had instructed orally to cancel the registration of the petitioner's show room. Pursuant to the said oral instructions, the Deputy Commercial Tax Officer, Kancheepuram, the respondent herein, issued a show cause notice on 22.08.2007, calling upon the petitioner to submit his explanation as to how he had located the show room in the disputed place said to be a play ground allotted by the Government.

3. The petitioner has submitted his detailed explanation on 10.09.2007 stating that the construction of show room was duly authorised by the competent authorities and that the Commissioner of Right to Information, has no jurisdiction to issue any oral instruction to the respondent for cancellation of the registration of the show room given under the Taxation Act. Without considering his explanation in a proper perspective the respondent has cancelled the registration in a cryptic manner and, therefore, the petitioner has filed the present writ petition for the relief stated above.

4. Heard both sides.

5. Mr.R.Mahadevan, learned Additional Government Pleader, on instructions, submitted that the Commissioner appointed under Rights to

Information Act, has passed detailed orders regarding the objections dated 22.02.2007 submitted by the Kancheepuram Kanaga Durgai Amman Nagar and Annai Indira Nagar Residents Association and submitted that there is no illegality in the order of cancellation.

6. A perusal of the impugned order of cancellation makes it clear that the respondent has failed to consider the explanation submitted by the petitioner to the show cause notice on the proper perspective. It is also evident that the respondent has merely acted on the oral instructions of the Commissioner, appointed under the Right to Information Act, without following the procedure set out in the VAT Tax 2006.

7. Sub Section 14 of Section 39 of the Tamilnadu Value Added Tax Act, 2006 provides the procedure for registration as well as cancellation. Section 39 (14) of the said Act is extracted here under:

> "The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it."

8. Sub Clause 15 of Section reads as follows:

> "No application for registration or for a copy or duplicate of the certificate under this Section shall be refused and no order under sub section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard."

9. When there is a mandatory provision in the Act providing 'opportunity of being heard' the respondent ought to have followed the procedure, before cancelling the registration.

10. Right to practice any profession, or to carry on any occupation, trade or commerce is a fundamental right guaranteed under the constitution and keeping that in mind, legislature has provided a right of personal hearing before cancellation of the registration. The impugned order, which is passed in violation of the principles of natural justice, as well as non-consideration of the explanation offered by the petitioner in the proper perspective, is liable to be set aside. Accordingly, the impugned order of the respondent dated 19.09.2007 is set aside and the respondent is directed to scrupulously follow the provisions contemplated under the Act, providing adequate opportunity to the petitioner and pass a speaking order.

11. With the above directions, the writ petition is disposed of. Consequently, connected M.P.is closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

kvsg

To

The Deputy Commercial Tax Officer
Kancheepuram North Tax Assessment Circle
Kancheepuram.

+ one cc to Mr. J. Ramakrishnan, Advocate, SR. 64211

+ one cc to the Special Government Pleader, SR.64023.

JP(CO)
RP 5/12/2007

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